

HANDED OUT AT  
11/2/09 TRAIL FORCE  
MEETING

**Dushoff, Jay S.**

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**From:** Ponath, Trice A.

**Sent:** Monday, November 02, 2009 4:31 PM

**To:** Dushoff, Jay S.

**Subject:** Emailing: 9-511 - Power to engage in business of public nature; outside water rates; right of eminent domain.htm

9-511. Power to engage in business of public nature; outside water rates; right of eminent domain

A: A municipal corporation may engage in any business or enterprise which may be engaged in by persons by virtue of a franchise from the municipal corporation, and may construct, purchase, acquire, own and maintain within or without its corporate limits any such business or enterprise. A municipal corporation may also purchase, acquire and own real property for sites and rights-of-way for public utility and public park purposes, and for the location thereon of waterworks, electric and gas plants, municipal quarantine stations, garbage reduction plants, electric lines for the transmission of electricity, pipelines for the transportation of oil, gas, water and sewage, and for plants for the manufacture of any material for public improvement purposes or public buildings. If a municipality provides water to another municipality, the rates it charges for the water to the public in the other municipality shall be one of the following:

1. The same or less than the rates it charges its own residents for water.
2. The same or less than the rates the other municipality charges its residents for water.
3. If the other municipality does not provide water, the average rates charged for water to the residents in the other municipality by private water companies.
4. Rates determined by a contract which is approved by both municipalities and in which such rates are justified by a cost of service study or by any other method agreed to by both municipalities.

B. Nothing in this section shall affect a surcharge on water provided to another municipality adopted prior to July 1, 1986 provided that the surcharge did not exceed thirty per cent of the rates the municipality providing the water charges its own residents and except that any increase in the percentage of such surcharge proposed after August 13, 1986 shall be subject to the requirements of this section.

C. The municipality may exercise the right of eminent domain either within or without its corporate limits for the purposes as stated in subsection A, and may establish, lay and operate a plant, electric line or pipeline upon any land or right-of-way taken thereunder, and may manufacture material for public improvement purposes and barter or exchange it for other material to be used in public improvements in the municipal corporation, or sell it to other municipal corporations for like purposes, and for any and all such purposes.

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HANDLED AT  
11/2/09 TASIC  
FOR MEETING

**Dushoff, Jay S.**

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**From:** Ponath, Trice A.

**Sent:** Monday, November 02, 2009 3:47 PM

**To:** Dushoff, Jay S.

**Subject:** Emailing: 12-1116 - Actions for condemnation; immediate possession; money deposit.htm

12-1116. Actions for condemnation; immediate possession; money deposit

A. All actions for condemnation shall be brought as other civil actions in the superior court in the county in which the property is located except that, at least twenty days before filing an action for condemnation of property or any interest in property, the plaintiff shall deliver to the property owner of record and as a courtesy to the sole lessee of record, if applicable, according to the records of the county recorder in the county in which the property is located:

1. A written offer to purchase the property or interest in the property and to pay just compensation for the property or interest in the property and for any compensable damages to any remaining property. The offer must constitute the plaintiff's estimate of just compensation. The offer may be made subject to any lessees of record or any lessees who may claim a compensable interest. The offer does not impose an obligation on the plaintiff to provide a written offer to purchase the lessee's interest.

2. One or more appraisals that support the amount of the proposed compensation.

B. Except for special taxing districts formed pursuant to title 48, chapter 17, if no lease is recorded or if more than one lease is recorded for the property with the county recorder of the county in which the property is located, at least twenty days before filing an action for condemnation of property or any interest in property, the plaintiff shall provide notice of the offer and appraisal to the party having a plain and obvious commercial ownership or operational interest in substantial improvements on the property by posting the notice in plain sight at the property that may be subject to condemnation.

C. For special taxing districts formed pursuant to title 48, chapter 17, if more than one lease is recorded for the property with the county recorder of the county in which the property is located, at least twenty days before filing an action for condemnation of property or any interest in property, the plaintiff shall provide notice of the offer and appraisal by delivering to all property interest holders of record the notice that an offer has been made and an appraisal has been conducted. The notice does not apply to lessees of record if the lease or other written agreement governing the interest holder's rights in the property provides that the property interest holder would not be entitled to condemnation proceeds.

D. If a lessee that is not noted in the record of the county recorder and has a commercial ownership or operational interest in substantial improvements on the property requests a copy of the offer and appraisal the plaintiff shall promptly comply with the request on presentation of documentation by the lessee of the lessee's interest in the property.

E. At the time of filing the complaint, or at any time after filing the complaint, the plaintiff may apply to the court for an order permitting the plaintiff to take possession of and use the property sought to be condemned for the purpose prayed for.

F. The superior court may waive the requirements of subsection A, B, C or D of this section if the court determines that the plaintiff will suffer immediate and irreparable harm that outweighs the property owner's or lessee's interest.

G. On filing the application, the court shall set a time for a hearing. Notice shall be served on the parties in interest by personal service within the state, or by publication if without the state, in any manner as the court directs.

H. On the day of the hearing, if it appears that the use for which the property is sought to be condemned is a necessary use, the court shall receive evidence as to the probable damages to each owner, possessor or person having an interest in each parcel of land sought to be condemned and of any unpaid property taxes that have been levied, including penalties and interest, on the property sought to be condemned and may direct that on a deposit of money, on direct payment to each owner, possessor or person having an interest in each parcel, or if the condemnor is the state or a county, city, town or political subdivision of this state, on posting a bond in a form to be approved by the court, the plaintiff shall be let into the possession and full use of the parcels of land, as described in the order, for the purposes specified in the order.

I. The plaintiff may deposit the money or bond with the clerk of the court or the state treasurer. The money or bond may be held for the use and benefit of each person having an interest in each parcel of land sought to be condemned, subject to final judgment after trial of the action, and may be held also as a fund to pay any further damages and costs recovered in the proceedings and any unpaid property taxes that were levied as of the date of the order for immediate possession, including penalties and interest, on the property sought to be condemned, as well as all damages sustained by the defendant if for any cause the property is not finally taken for public use. The deposit of the money or bond shall not discharge the plaintiff from liability to maintain the fund in full, but it shall remain deposited for all accidents, defalcations or other contingencies, as between the parties to the proceedings, at the risk of the plaintiff, until the compensation or damage is finally settled by judicial determination, and the court awards such part of the money or bond as shall be determined to the defendant, or until the clerk or the state treasurer is ordered by the court to disburse it. The clerk of the court or the state treasurer is liable to the plaintiff for the deposit or bond if it is lost or abstracted.

J. If the plaintiff elects to deposit the money or bond in the state treasury, the state treasurer shall receive the money or bond and return a receipt for the money or bond to the court, and the state treasurer shall safely keep the deposit in a special fund to be entered on the state treasurer's books as the condemnation fund. The state treasurer shall invest and divest monies in the condemnation fund as provided by section 35-313, and monies earned from investment shall be credited to the fund. The state treasurer shall disburse the money deposited and, if necessary, convert the investments to cash for the purpose of making the disbursements or forfeit the bond as the court may direct pursuant to its judgment. After satisfaction of the judgment in a condemnation action and payment of any unpaid property taxes that were levied as of the date of the order for immediate possession, including penalties and interest, on the property sought to be condemned, the excess, if any, of the deposit made regarding the action, including monies earned

by the investment and reinvestment of the deposit, shall be returned by the state treasurer to the plaintiff by a warrant that the department of administration shall issue upon direction of the state treasurer after having received a certified copy of the judgment and without regard to provisions requiring the filing of a claim against the state. Any monies remaining in the condemnation fund at the end of the fiscal year do not revert to the state general fund.

K. If the plaintiff elects to deposit the money or bond with the clerk of the court, the clerk shall receive the money or bond and return a receipt for the money or bond to the court, and the clerk is liable to the plaintiff if the money or bond is lost or abstracted. The clerk shall disburse the money or forfeit the bond as the court may direct pursuant to its judgment. Any money remaining in a deposit after the judgment of the court and all unpaid property taxes that were levied as of the date of the order for immediate possession, including penalties and interest, have been fully paid shall be returned by the clerk to the plaintiff.

L. On application by any party, the court may order that money deposited with the clerk of the court or the state treasurer be paid to any owner, possessor or person having an interest in any parcel.

M. Subject to court approval, the parties may also stipulate any of the following with any owner, occupant or possessor of any parcel:

1. To the amount of money that the plaintiff may deposit with the clerk of the court or with the state treasurer for any owner, occupant or possessor of any parcel.
2. To the amount of direct payment to any owner, occupant or possessor of any parcel.
3. To the payment of money deposited with the clerk of the court or the state treasurer to any owner, occupant or possessor of any parcel.
4. For the release of any bond on payment to any owner, occupant or possessor of any parcel.

N. A person in interest for whom a deposit has been made pursuant to stipulation for the person's withdrawal is entitled to interest on the amount that the person is allowed to withdraw from the date the order for immediate possession is signed by the court pursuant to subsection C of this section until the date of withdrawal. This person is also entitled to interest on that portion of the final judgment, exclusive of costs allowed by the court, that exceeds the amount that is deposited for the person's withdrawal from the date the order for immediate possession is signed by the court until the judgment is paid. If the amount that is withdrawn by any defendant exceeds the amount of the final judgment awarded the defendant inclusive of costs allowed by the court and any unpaid property taxes that were levied as of the date of the order for immediate possession, including penalties and interest, on the property sought to be condemned, the defendant withdrawing the funds immediately shall repay to the plaintiff the excess, with legal interest from the date of withdrawal to the date of repayment, except that the amount that is necessary to pay any unpaid property taxes that were levied as of the date of the order for immediate possession, including penalties and interest, on the property shall be paid to the county treasurer of the county in which the property sought to be condemned is located.

O. Any stipulation that is made or any evidence that is introduced pursuant to this section shall

not be introduced in evidence or used to the prejudice of any party in interest on the trial of the action.

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